PP

v.

MOHAMAD AZIZ MUSAINI

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB PATAIL J
[CRIMINAL APPEAL NO: 41-350-98]
12 MARCH 1999

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Sections 6 and 39A(1) - Possession of dangerous drugs - Proof - Whether prima facie case made out - Whether plant material cannabis as defined in s. 2 of Act - Physical and chemical tests on samples by chemist - Sufficiency of tests - Consideration of Leong Bon Huat v. P.P. and Saad Mat Takraw v. PP*

EVIDENCE: *Expert evidence - Possession of cannabis - Evidence of chemist - Analysis of plant material - Failure to challenge analysis during cross-examination - Effect - Whether a statement by chemist that plant material was cannabis was sufficient proof of it - Whether would attract s. 114(e) Evidence Act 1950*

This was an appeal against the decision of the learned magistrate acquitting and discharging the respondent on a charge of possesion of 26.36 grams of cannabis under s. 6 of the Dangerous Drugs Act 1952 ('the Act'). The facts showed that in so acquitting the respondent without calling for his defence, the learned magistrate had rejected the evidence of the chemist, purportedly on grounds that the chemist had not properly analysed and tested the plant material ('the exhibit'), and had not therefore proved that the exhibit were 'cannabis' as defined in s. 2 of the Act. The evidence as adduced by the chemist, which was not challenged, showed, however, that, the chemist did in fact say that she had analysed 100% of the exhibit *vide* the four standard tests, and had also analysed the same 'dari segi visual dan microscopic untuk tentukan genus cannabis dan ia sama seperti Indian Hemp dalam s. 2 Akta Dadah Berbahaya'. That being so, the public prosecutor argued in this appeal that the learned magistrate was wrong in rejecting the chemist evidence aforesaid. It was also contended that the learned magistrate, in rejecting the evidence, had misinterpreted *Leong Bon Huat v. PP* and *Saad Mat Takraw v. PP*.

Held:

[1] In regard to the evidence of the chemist, unless the evidence is so inherently incredible that no reasonable person can believe it to be true,

it should be accepted as *prima facie* evidence. As long as the evidence is credible, there is no necessity for the chemist to show in detail what he did in his laboratory.

[2] *Leong Bon Huat v. PP* shows that there is a clear distinction between a charge of trafficking where quantity is central to the finding, and possession where quantity is secondary. Quantity is relevant only in the event of conviction where quantity is one of the factors to be taken into consideration. In this case the chemist had testified that she had examined 100% of the exhibit and had subjected the same to the standard physical, microscopic and chemical tests. That aside, she had stated that the material is pure cannabis, and had further made clear reference to cannabis as defined in s. 2 of the Act.

[3] The judgment in *Leong Bon Huat v. PP* shows that the evidence of the chemist therein had been challenged during the trial. The same however cannot be said in this case as the cross-examination cannot be said to have challenged the chemist's evidence. The law is clear that where a particular point has not been raised in issue, it would be regarded as imperturbable on that score and accepted as sufficiently proved. Thus where not challenged, a statement by the chemist that he found the substance to be cannabis is sufficient proof of it. The court has a discretion to apply the rebuttable presumption under s. 114(e) Evidence Act 1950 that the official acts of the chemist has been regularly preformed.

[Appeal allowed. Respondent to enter defence.]

Case(s) referred to:
Leong Bon Huat v. PP [1993] 3 CLJ 603 ***(foll)***
Loo Keck Leong v. PP [1992] 3 CLJ 1332 ***(cit)***
PP v. Tang Kheng Teong & Anor [1997] 4 CLJ 34 ***(cit)***
PP v. Lam Sam [1991] 3 MLJ 426 ***(foll)***
Saad Mat Takraw v. PP [1998] 3 CLJ 380 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 6, 39A(1), 39B(2)
Evidence Act 1950, s. 114(e)

For the appellant - Siti Salwa Musa; DPP
For the respondent - M Visvanathan. M/s Gurkash Tan & Ezura

Reported by Sherin Kunhibava / WA Sharif

JUDGMENT

Abdul Wahab Patail J:

The respondent has been acquitted and discharged at the end of the prosecution case on 25 September 1998 by the Magistrates' Court on the following charge:

> Bahawa kamu pada 4.12.97 jam lebih kurang 9:00 malam di kawasan bawah Blok 7, Flat Jalan San Peng, di dalam Daerah Dang Wangi, di dalam Wilayah Persekutuan, Kuala Lumpur, sebagai orang yang tidak diberi kuasa di bawah seksyen 4 atau 5 Akta Dadah Berbahaya 1952, telah didapati memiliki dadah berbahaya iaitu (30) peket plastik cannabis yang beratnya 26.36 gram dan oleh yang demikian itu kamu telah melakukan satu kesalahan di bawah seksyen 6 Akta Dadah Berbahaya 1952 (Pindaan 234/80*)* dan boleh dihukum di bawah seksyen 39A(1) Akta yang sama.

The prosecution, being dissatisfied with the decision of the learned magistrate, has appealed primarily on the grounds that the learned magistrate had erred as follows:

1. Yang Arif Majistret telah silap dari segi fakta dan undang-undang apabila melepas dan membebaskan Responden dari tuduhan tersebut tanpa dipanggil untuk membela diri.

2. Yang Arif Majistret telah silap dari segi fakta dan undang-undang apabila memutuskan ahli kimia (SP4) di dalam keterangannya gagal menjelaskan bagaimana ujikaji yang dibuat ke atas barang-barang kes sehingga SP4 dapat mengesahkan dadah itu adalah 'cannabis' seperti di dalam seksyen 2 Akta Dadah Berbahaya 1952.

3. Yang Arif Majistret telah silap dari segi fakta dan undang-undang apabila menyatakan kegagalan SP4 memberitahu berapa sampel yang diambil untuk tujuan analisa adalah memudaratkan kes pihak pendakwaan sedangkan terdapat keterangan bahawa dadah tersebut adalah 'cannabis'.

4. Yang Arif Majistret telah silap dari segi fakta dan undang-undang apabila tersalah tafsir kes-kes *Saad Mat Takraw v. P.P.* [1998] CLJ JT (9) dan *Leong Bon Huat v. PP* [1993] 3 MLJ 11.

5. Yang Arif Majistret telah silap dari segi fakta dan undang-undang apabila menolak keterangan SP4 sedangkan keterangannya tidak dicabar oleh pihak pembelaan dan tiada keterangan pakar yang lain oleh pihak pembelaan untuk mencabar keterangan SP4 berkenaan analisa yang beliau jalankan.

Since the grounds of appeal relate entirely to the evaluation of the evidence of the chemist Halimah Bt Abdul Rahim (SP4) from the Chemistry Department, it is useful to reproduce the evidence of the said witness in full. It is as follows:

a Angkat sumpah dan beri keterangan dalam Bahasa Malaysia.

PEMERIKSAAN UTAMA;

Saya ialah ahli kimia di Jabatan Kimia Malaysia. Saya dapat Ijazah Sarjana Muda Sains (Hons) USM; dalam tahun 1988. Saya dapat Ijazah Sarjana UM
b tahun 1994 dalam bidang hasilan semulajadi.

Saya berkhidmat di bahagian Narkotik Jabatan Kimia selama 5 tahun.

Saya telah menjalani latihan sambil bekerja untuk jalankan analisa dadah merbahaya termasuk ganja, heroin, opium dan pil ekstacy.

c Saya juga analisa cannabis.

lni kali pertama saya beri keterangan di Mahkamah.

Saya mula analisa dadah untuk kes saya sejak tahun 1997.

d Pada 5/12/97 saya ada di Jabatan Kimia PJ. Pada pukul 11.26 am 5/12/97 diserah pada saya oleh Sjn 70089 Zaini.

(SP3 dicamkan).

Mahkamah: SP3 rujuk pada lapuran kimia.

e Sjn Zaini serah satu sampul tanda A bermeteri FMP 24. Saya boleh cam sampul itu.

(P4 ditunjukkan pada SP3 dan dicamkan).

Keadaan sampul bermeteri, bertutup baik semasa saya terima. Saya semak
f barang kes dengan Pol. 31 juga pengenalkan I.O. yang hantar barang kes.

Sekiranya betul saya akan daftarkan dan saya akan keluarkan satu resit penerimaan. Saya boleh cam Pol. 31.

(P10 dirujuk pada SP3 dan dicamkan).

g (P10 dirujuk pada SP3 dan dicamkan).

Nombor makmal (1)5) FOR 7699/97-0.

Selepas itu saya simpan sampul dalam kabinet.

h Saya tampal sampul dengan nombor makmal. Saya buka sampul untuk semak kandungan. Dalam sampul ini ada 2 paket plastik. Setiap satu paket ada 15 paket plastik kecil.

Dalam semua 30 paket plastik itu ada bahan tumbuhan. Saya boleh cam paket-paket plastik itu.

i (P6A & B dirujuk dan dicamkan).

(P7 dirujuk pada SP3 dan dicamkan). *a*

Semasa saya terima paket-paket kecil ini semuanya berseal. Saya yang potong paket-paket kecil ini untuk keluarkan bahan untuk dianalisa.

Saya boleh camkan kandungan daun kering itu.

(PS dirujuk pada SP3 dan dicamkan). *b*

Saya simpan bahan-bahan ini dalam kabinet saya yang berkunci dalam bilik kebal. Kunci kabinet itu saya simpan.

Kabinet itu khas untuk saya sahaja. Saya akan keluarkan bahan tumbuhan untuk ditimbang. Saya ambil berat kasar iaitu berat 30 paket plastik bersama kandungannya. *c*

Berat kasar ialah 40.9032 gm. Untuk dapatkan berat kandungan, saya keluarkan bahan tumbuhan dari 30 paket plastik, saya timbang 30 paket plastik kosong, beratnya 14.5402 am.

Berat atas kandungan 26.36 gm. *d*

Saya mula timbang pada 5/12/97.

Saya jalankan analisa dari 8/12/97 - 17/12/97. Saya simpan barang kes dalam kabinet kunci saya. *e*

Saya jalankan 4 ujian iaitu ujian visual secara fizikal, ujian mikroskopik, ujian duquenois-levine dan ujian thesis(sic)-layer-chromatography.

Daripada keempat-empat ujian saya dapati 2 paket plastik yang setiap satu ada 15 paket plastik kecil mengandungi bahan tumbuhan 26.36 gm bagi 30 paket plastik tersebut adalah cannabis seperti yang ditaksif dalam Seksyen 2 ABM 1952. Daripada ujian fizikal saya dapati bahan tumbuhan mempunyai sifat genis cannabis. *f*

Dalam ujian kedua dari segi mikroskopik sama dengan genis cannabis. Ujian ketiga saya dapati ada resin dan diikuti dengan ujian TLC saya dapati ada bahan aktif cannabinoids. *g*

Keempat-empat ujian mesti dijalankan untuk sahkan bahawa bahan itu cannabis seperti yang ditaksifkan bawah Seksyen 2 ADM.

Saya analisa bahan ini secara 100%. Setiap kali selesai analisa saya masukkan dalam sampul sama dan masukkan dalam kabinet berkunci saya. *h*

Bila saya tamat ujian, saya sealkan dalam paket plastik yang dibekalkan oleh saya dan saya tulis nombor makmal.

(P5 dirujuk pada SP3 dan dicamkan).

i

a Paket-paket plastik itu saya masukkan dalam paket plastik yang saya bekalkan dan seal. Saya masukkan paket-paket plastik ini dalam sampul surat yang sama dan saya seal dengan seal Jabatan Kimia.

Saya masuk sampul dalam kabinet berkunci saya. Eksibit ini sahaja saya analisa pada tarikh 8/12/97 - 17/12/97. Tiada peluang untuk barang kes ini bercampur
b dengan barang kes lain.

Pada 22/12/97 saya keluarkan lapuran bagi (PJ) FOR 7699/97-0.

(ID12 dicamkan oleh SP3).

Dalam ID12 dicatitkan nombor makmal (PJ) FOR 7699/97-0.
c

Pada 3.55 p.m. 6/1/98 saya serahkan barang kes pada Sjn 70089.

t.t. Norliza bt Othman.

PEMERIKSAAN BALAS:

d Saya tidak ingat berapa kes libat lain cannabis saya analisa.

Berat 26.36 gm adalah berat bersih bahan tumbuhan.

Kita tidak buat kuantitatif test.

e Kuantitatif test untuk tentukan kandungan untuknya nak tentukan berapa kandungan cannabinoid dalam bahan aktif tersebut.

TLC untuk lihat bahan aktif dalam bahan tumbuhan.

Ikut Seksyen 2 ADM kuantitatif test tidak diperlukan. Visual dan mikroskopik
f test untuk sahkan bahan itu genus cannabis.

Kalau ada bahan asing akan dikeluarkan.

Dalam bahan ini setelah diperiksa tiada bahan asing. Bahan ini adalah pure cannabis.

g Mereka lakukan keempat-empat ujian ini untuk sahkan cannabis.

Dari segi visual dan mikroskopik untuk tentukan genus cannabis dan ia sama seperti Indian hemp dalam Seksyen 2 ADM.

Indian Hemp adalah synonym bagi cannabis. Dalam Seksyen 2 cannabis
h digunakan. Dalam kes ini ia adalah cannabis.

Indian Hemp nama lain bagi cannabis.

Sampul itu telah bertanda A semasa saya terima.

Tarikh analisa dijalankan dari 8/12197 - 17/12/97. Ujian dijalankan satu persatu-
i satu.

Bila ujian selesai saya masukkan dalam bilik kebal. Jika perlu ke Pendaftar. Saya masukkan barang kes dalam kabinet di makmal, kabinet ini hanya saya yang guna.

t.t. Norliza bt Othman

PEMERIKSAAN SEMULA:

Kandungan bahan ini cannabis seperti ditaksif bawah Seksyen 2 ADM.

t.t. Norliza bt Othman.

SP3 dilepaskan.

t.t. Norliza bt Othman.

The first ground appears to be a general ground. In the circumstances it would be proper to place the other four grounds as parts of this general ground.

The conclusion of the learned magistrate objected to in the second ground of appeal is based clearly on the two cases mentioned in ground four. Ground three, being the objection as to failure to give evidence on the number of samples taken, is also related to the interpretation of the decision in the two cases mentioned in ground four. The last ground would also depend on the interpretation of the two cases. I would therefore now turn to the two cases.

In *PP v. Saad Mat Takraw* [1998] 3 CLJ 380; [1998] 3 MLJ 784, the High Court, following the decision in *Leong Bon Huat v. PP* [1993] 3 CLJ 603; [1993] 3 MLJ 11 FC, held that:

> In my judgement, since the government chemist had said that only the two qualitative chemical tests (DLT and TLC) were conclusive tests (the first two, namely, the physical and the microscopic examination were inconclusive tests), it is the vital duty of this court to determine whether the samples taken by him are of 'adequate quantity' as defined in *Leong Bon Huat v. PP* [1993] 3 MLJ 11. He has to explain how the quantity or weight of samples taken from the bulk of 194 packets were representative of the whole. Thus, it stands to reason that bare assertions such as 'representative samples' would fall short of the 'adequate quantity' test laid down by the Supreme Court in *Leong Bon Huat.*

Since on this point *PP v. Saad Mat Takraw* relied entirely on *Leong Bon Huat*, I turn to the latter case directly. In *Leong Bon Huat v. PP*, the Supreme Court considered a case where the appellant was arrested while carrying a black bag, from which was recovered a bulk of dried leaves wrapped in newspaper. The dried leaves were sent to a government chemist for examination and analysis.

The latter concluded it was 793.85 grams of plant material. The total weight of samples taken for analysis only 'more than 10% of the net weight of plant material' of 793.85 grams.

The relevant part of the evidence of the chemist was quoted by the Supreme Court:

> I conducted a visual examination of the contents of 'E1' and then I took samples of the content of dried plant matter. I examined the samples using chemical methods and also conducted microscopic examination. I took samples from various positions of each layer of dried plant matter and I examined and analyzed such samples individually.

The reasoning behind the Supreme Court's reservations with the chemist's evidence is as follows:

> It is true that the chemist did say that he had conducted a physical examination of the whole of the plant material, by which we suppose, he meant a visual examination, aided no doubt by a microscope. But while the result of such an examination might well establish, on the balance of probabilities, that the plant material was cannabis within the meaning of the Act it was necessary to take the matter further and establish beyond any reasonable doubt that that was so. **This further step would, of necessity, have involved the carrying out of chemical tests on adequate quantities of the plant material.** What would be adequate quantities for this purpose would depend on the particular circumstances of each case and we do not consider that any useful purpose would be served by laying down any mathematical formula. Suffice it to say, that in the present case, we were not satisfied that the samples of plant material upon which the chemist had carried out the chemical tests were adequate, having regard to 'the total weight of the plant material, for the reasons stated.'
>
> We note that in the Singapore case of *PP v. Ang Soon Huat*, where one of the contentions advanced by counsel for the accused was similar to that advanced in the present appeal, and where the contention was upheld, the court having reminded itself of the criminal standard of proof, had concluded that where the court was left in doubt as to whether the accused has committed an offence in a lower or higher degree of seriousness, the court should make a finding in the lower degree, particularly where a finding in a higher degree will give rise to a mandatory sentence of death.
>
> The result, therefore, was that so far as the 'charge of trafficking in cannabis in contravention of s. 39B was concerned, the case against the appellant was not proved with that certainty which is necessary in order to justify a verdict of guilty'. (Per Lord Hewart CJ in *D v. Wallace* applied by Thomson CJ in *Jubri v. PP*.)

Accordingly, we have no option but to allow the appeal, to quash the conviction for trafficking in cannabis to set aside the sentence and to substitute *in lieu* thereof, a conviction for possession of cannabis in contravention of s 39A of the Act and a sentence of life imprisonment to take effect from the date of arrest with the mandatory ten strokes of the rotan.

From the evidence of the chemist in *Leong Bon Huat v. PP* as quoted above, the chemist had examined the contents of 'E1', and took samples of the content of the dried plant matter. Then he examined the samples using chemical methods and conducted microscopic examination. He explained the samples were taken from various positions of each layer of dried plant matter. That elaboration was given as explanation of how he arrived at the conclusion that the dried leaves to be 793.85 grammes of cannabis. As to the total quantity of samples he took, he could only hazard it was more than 10% of the nett weight of 793.85 grammes.

It is pertinent to remember that the dangerous drug concerned, be it cannabis or cannabis resin is a plant material. It could be mixed with other plant material. Other plant material must first be removed. Only cannabis plant material and resin ought to be taken into consideration. Since there is no legal distinction between cannabis plant material or cannabis resin, there is no conceivable purpose to determine what percentage is resin. Since more than 200 grammes of cannabis or its resin or mixture of both could result in the presumption of trafficking and lead to the death penalty under s. 39B(2) of the Dangerous Drugs Act 1952, it is essential to prove that all of the plant material and resin, or at the very least 200 grammes of it, is similar and does not contain alien matter. All of the plant material must be subjected to physical examination for this purpose.

It is also pertinent to bear in mind that after the physical examination above, samples are taken of the material identified as cannabis by the physical examination, for chemical analysis. The Supreme Court held in *Leong Bon Huat v. PP* that while the physical examination might well establish the fact it is cannabis on a balance of probabilities, chemical tests are of necessity required to prove it is so 'beyond reasonable doubt'.

Now it must be remembered that physical examination achieves two things, that is a) to show all of the plant material is the same and contains no alien matter, and b) to physically identify it, for example in this case, that it is cannabis.

A very small quantity is actually required for chemical tests. Samples are therefore taken for this purpose. The samples are then subjected to chemical tests. The amount required for the chemical test may well be much smaller than the sample taken. It takes little imagination to realise that if the original

quantity is very large, even a sample taken on any predetermined percentage may be too large to be fully consumed in testing; and if the quantity is very small, the entire original amount may well be consumed for the test. The Supreme Court in *Leong Bon Huat v. PP*, recognised that where a large quantity is involved, it is sufficient to conduct chemical tests on an adequate quantity as a sample. It also wisely cautioned that what would be adequate quantities would vary according to the circumstances of each case. For that reason the Supreme Court did not fix any specific percentage.

Leong Bon Huat v. PP is a decision with particular reference to the evidence of the chemist. The chemist in that case said he conducted a visual examination of the contents of 'E1', then took samples using chemical methods and also microscopic examination. The material part of the finding of the Supreme Court explains the issue:

> It will be seen that he made no mention of the results of his physical examination; for example, he did not say that the plant material was all of the same type and physical features as that of cannabis, nor did he say what were the results of his microscopic examination. Did he notice any resin in the plant material? If so, in what quantity was present? Nor did he tell the court as to what were the tests he conducted using chemical methods; for example, did he resort to the Dequenois Levine test and/or the thin layer chromatography test? If so, what were the results of those tests?

The chemist in that case gave a conclusion that the bulk of 793.85 grammes was cannabis. The conclusion was made upon microscopic examination and chemical tests only of samples taken. But although he said he conducted a visual examination of the bulk, he did not say he found from the visual examination of the bulk that all of the bulk were of the same type and physical features as cannabis. While the chemist said he conducted chemical tests, he did not say what the tests were. It is important that the tests conducted accords with the generally accepted tests for cannabis. The other issue is that the samples must be a representative sample, such that there can be no reasonable doubt that the sample is the same as the original material from which the sample is taken.

In every individual case involving plant material, it is incumbent upon the prosecution to satisfy the court beyond reasonable doubt, that in the particular circumstances of each case:

1) That all of the plant material in the original bulk is the same material; ie cannabis and not including other plants. This is determined by physical examination, and all alien matter if any must first be removed before the weight is determined.

2) That the samples taken from the bulk identified by physical examination as cannabis is representative of the bulk of material after removal of all alien matter if present;

3) That the tests, being tests that are generally accepted for testing of cannabis, conducted on the samples prove that it is cannabis or cannabis resin or both.

The judgment in *Leong Bon Huat v. PP* shows that the evidence of the chemist had been challenged during the trial. The same cannot be said in this case during cross-examination. Counsel merely questioned the witness and obtained clarification, but the cross-examination cannot be said to have challenged the chemist's evidence. Where it is not challenged on an issue as such, then it must be taken that that point is not in issue. Since a decision on any question is made after hearing both sides of the question, raising an issue such as in this case in submission rather than in properly conducted cross-examination which would have elicited the truth of what was in fact done, carries little weight. Certainly it cannot be the basis of basing a decision to acquit. The burden at the end of the prosecution case is to show a *prima facie* case. The issue that the analysis was not properly done was not put to the witness. In the normal conduct of a case a lawyer may choose not to put a question to a witness directly, if the matter is obvious. For example if the chemist said she had used a method that obviously is not one of the established or usual method. There is no such suggestion in this case. Alternatively the lawyer may choose not to question the chemist directly, perhaps because he can call another witness from for example the same department who could say that the method employed by the chemist is defective or unusual. That could result in the chemist being recalled to explain so that the court could arrive at the truth of it. That is the reason why any issue intended to be raised, ought to be put to the relevant witnesses, unless the issue is so obvious it is not necessary to do so.

The Supreme Court in *Public Prosecutor v. Lam Sam* [1991] 3 MLJ 426 held:

> In regard to the evidence of the chemist, unless the evidence is so inherently incredible that no reasonable person can believe it to be true, it should be accepted as *prima facie* evidence. As long as the evidence is credible, there is no necessity for the chemist to show in detail what he did in his laboratory. The evidence of the chemist in this case was more than sufficient as basis to call for the defence, granted that all the other ingredients of the offence had been successfully proved
>
> The doubt entertained by the learned Judge in this case was not arrived at on reasonable or rational grounds and the test he applied to the evidence of the chemist on the question of the weight of the drugs was a misdirection.

The appeal should be allowed and the case remitted to the learned Judge to call for the defence.

Public Prosecutor v. Lam Sam was recently applied by the Court of Appeal in *PP v. Tang Kheng Teong & Anor* [1997] 4 CLJ 34. Peh Swee Chin SCJ in writing the judgment of the Supreme Court in *Loo Keck Leong v. PP* [1992] 3 CLJ 1332; [1992] 2 MLJ 177 reflected similar approach as in *Public Prosecutor v. Lam Sam* although the latter case was not referred to, that where a particular point has not been raised in issue, it would be regarded as imperturbable on that score and accepted as sufficiently proved. Thus where not challenged, a statement by the chemist that he found the substance to be cannabis is sufficient proof of it. The court has a discretion to apply the rebuttable presumption under s. 114(e) of the Evidence Act 1950 that the official acts of the chemist has been regularly performed.

Leong Bon Huat v. PP shows also there is a clear distinction between a charge for trafficking where quantity is central to the finding, and possession, where quantity is secondary. The Supreme Court in that case, not satisfied as to the exact quantity of cannabis, acquitted the appellant of the trafficking charge and convicted him for possession of cannabis. *Saad b Mat Takraw & Anor v. PP* [1998] 3 CLJ 380; [1998] 3 MLJ 784 is also a case involving trafficking and the analysis of a quantity of cannabis said to be 180.844 kilograms. In that case the evidence shows that from the large quantity of suspected material, the sampling procedure was wholly unsatisfactory, the chemical tests were wanting, leaving only the physical examination unimpugned. The court in that case held that a conviction cannot be based upon physical examination alone.

In a charge for possession of cannabis, its exact quantity is not central to the charge. Quantity is relevant only in the event of a conviction where quantity is one of the factors to be taken into consideration. In this case the chemist has said she had analysed 100% of the exhibit. Given that the relatively small quantity compared to *Leong Bon Huat v. PP*, it is not impossible to have analysed it between December 8th and 17th. She had conducted two physical tests, being visual and microscopic, and two chemical tests, being Duquenois-Levine test and thin layer chromatography (TLC) test. The latter two, as the chemist had explained, were to determine the presence of the active elements of cannabis, ie cannabinoids. The witness in cross-examination has clearly stated the material is pure cannabis, containing no foreign matter.

The chemist in this case had also testified “dari segi visual dan microscopic untuk tentukan genus cannabis dan ia sama seperti Indian hemp dalam seksyen 2 ADM.” The reference to Indian hemp was clarified later “Dalam s. 2 cannabis digunakan. Dalam kes ini ia adalah cannabis. Indian hemp nama lain bagi cannabis.” There is no doubt she was referring to cannabis as defined in

s. 2 of the Dangerous Drugs Act. The quantity of cannabis in this case is sufficiently small as not to raise any reasonable doubt that she did indeed examine all of the suspect material.

In submission before this court, the issue of identity of the suspected material was raised as a further attack on the evidence of the chemist. It was argued that a doubt was raised because SP1 said weight was 42 gm, SP4 (the chemist) said it was 40.9032. But if weight of the empty plastic packets (14.5402 gm) was added to the net weight of 26.36 gm, there is a discrepancy of 40.9002 gm. I am of the view the difference of .003 gm and not as .03 gm as submitted, is immaterial. SP1 had in fact only given an estimate of the weight as 42 gm. In the circumstances, in view of the fact there are no other reasons for doubting that the suspected substances taken from the accused is the same as that received by and analysed by the chemist, I would reject this objection.

For the above reasons I would allow this appeal and order that the accused be ordered to enter upon his defence.